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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 JANE DOE,

4 Plaintiff,

New York, N.Y.

5 v.

23 Civ. 6418 (JGLC)

6 LEON BLACK,

7 Defendant.

8 -----x

Conference

9 November 7, 2024
10 11:10 a.m.

Before:

11 HON. JESSICA G. L. CLARKE,

12 District Judge

13
14 APPEARANCES

15
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24 BY: E. DANYA PERRY

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1 THE COURT: Good morning. We are here for an initial
2 pretrial conference in Doe v. Black.

3 Who do we have here for the plaintiff?

4 MS. CHRISTENSEN: Good morning, your Honor. Jeanne
5 Christensen, from Wigdor LLP, and I'm here with Meredith
6 Firetog and Doug Wigdor.

7 THE COURT: Good morning.

8 MR. WIGDOR: Good morning, your Honor.

9 THE COURT: And for the defendant.

10 MS. ESTRICH: Susan Estrich for Mr. Black, along with
11 Mr. Carlinsky.

12 MR. CARLINSKY: Good morning, your Honor.

13 MS. PERRY: Danya Perry. Good morning.

14 MS. BARRETT: Good morning. I'm Jennifer Barrett from
15 Quinn Emanuel.

16 THE COURT: Good morning.

17 So we have a number of things to accomplish today. I
18 have a number of motions pending before me. There are two that
19 I am going to rule on now. Those are the defendant's motion
20 for an interlocutory appeal and plaintiff's motion to amend the
21 complaint. So I will rule with respect to those on the record
22 today.

23 After that, we will turn to defendant's motion to
24 unseal plaintiff's name. I want to hear further argument with
25 respect to that motion. I am unlikely to rule today and will

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1 likely reserve ruling with respect to that motion, but I do
2 want to hear from the parties a bit more with respect to that
3 motion.

4 After that, we will take up the schedule in this case,
5 the parties' proposed confidentiality order, and one of the
6 discovery disputes that I have before me. So that's what I
7 have for my agenda today.

8 Anything else before we get to those items,
9 Ms. Christensen?

10 MS. CHRISTENSEN: Nothing from plaintiff, thank you.

11 THE COURT: Ms. Estrich?

12 MS. ESTRICH: Nothing, your Honor. Thank you.

13 THE COURT: All right. So I have reviewed the
14 parties' submissions regarding defendants's motion for an
15 interlocutory appeal at ECF no. 122. I'm going to rule on the
16 record now.

17 The Court grants defendant's motion pursuant to 28
18 United States Code 1292(b). A district court is permitted to
19 certify an interlocutory order for appeal when: (1) the order
20 involves a controlling question of law; (2) as to which there
21 is substantial ground for difference of opinion; and (3) an
22 immediate appeal from the order may materially advance the
23 ultimate termination of the litigation. There is no dispute
24 that the first and third elements are met here. The only
25 question is whether there is a substantial ground for a

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1 difference of opinion. This element can be met either where:
2 "(1) there is conflicting authority on the issue; or (2) the
3 issue is particularly difficult and of first impression for the
4 Second Circuit." That is from *Capital Records LLC v. Vimeo*
5 *LLC*, 972 F.Supp.2d 537, 551 (S.D.N.Y. 2013). The Court agrees
6 that both circumstances are present.

7 Although the Court disagrees with the conclusion
8 reached by Judge Kaplan in *Bellino*, that decision does suggest
9 that there is grounds for a difference of opinion. That
10 decision also supports that the issue of preemption here is a
11 particularly difficult one—not only because of *Bellino* but
12 also the relative lack of analogous case law, particularly on
13 the issue of conflict preemption. And, this is a question that
14 the Second Circuit has not yet answered, nor has the New York
15 Court of Appeals. The Court therefore grants defendant's
16 motion but will not stay this case while that appeal is
17 pending.

18 With respect to plaintiff's motion for leave to amend
19 the complaint, which is at ECF No. 91, I have reviewed the
20 parties' briefing on this issue as well. The Court grants
21 plaintiff's motion to amend the complaint. Rule 15(a) of the
22 Federal Rules of Civil Procedure provides that leave to amend
23 "shall be freely given when justice so requires." "Under this
24 liberal standard, a motion to amend should be denied only if
25 the moving party has unduly delayed or acted in bad faith, the

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1 opposing party will be unfairly prejudiced if leave is granted,
2 or the proposed amendment is futile." *Agerbrink v. Model*
3 *Services LLC*, 155 F.Supp.3d 458, 452 (S.D.N.Y. 2016). The
4 nonmovant bears the burden of showing prejudice, bad faith, and
5 futility. See *United States v. Bon Secours Health System,*
6 *Incorporated*, 567 F.Supp.3d 429, 438 (S.D.N.Y. 2021).

7 Here, there is no undue delay. We are at the outset
8 of this case. Discovery has yet to commence, and as such,
9 there is no undue delay and no prejudice to defendant related
10 to plaintiff amending the complaint at this time.

11 Defendant has also not met his burden with respect to
12 bad faith. Defendant argues that bad faith is established here
13 because of the delay in making these changes. He also argues
14 that the substance of the proposed amendment is suspect because
15 the new allegations do not bear on the sufficiency of
16 plaintiff's claim. Neither of these arguments demonstrate bad
17 faith. First, courts regularly allow delays of this length and
18 even longer without finding bad faith. See *Agerbrink*, 155
19 F.Supp.3d at 253 (collecting cases). Also, delay alone is not
20 enough. Second, plaintiff contends that the amendments are
21 simply to clarify what was previously alleged. That also does
22 not indicate bad faith. And defendant, who bears the burden
23 here, has not pointed to anything to credibly indicate bad
24 faith in the timing of this requested amendment.

25 Lastly, defendant has not demonstrated futility.

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1 Although defendant contends that the additions to the complaint
2 would not survive a Rule 12(f) motion, that is not the standard
3 for futility. Amendments are futile if they fail to cure prior
4 deficiencies or fail to state a claim under Rule 12(b)(6). See
5 *Pyskaty v. Wide World of Cars LLC*, 856 F.3d 216, 224-225
6 (2d Cir. 2017). Defendant has not, and cannot, argue that the
7 amendments fail to state a claim or fail to cure prior
8 deficiencies. As such, defendant fails to identify how any of
9 the changes are futile and, for those reasons, the Court grants
10 plaintiff's motion.

11 I know that there was a sealing motion that was also
12 attached to this motion as well. The parties are directed to
13 refile the documents relevant to this motion with redactions
14 consistent with the Court's order at ECF No. 106.

15 All right. So that takes care of those two motions.

16 I want to now turn to the motion to unseal plaintiff's
17 name. I have reviewed what the parties submitted. I want to
18 specifically focus on a few factors in particular from the
19 Sealed Plaintiff factors. Those are, first, whether the
20 plaintiff has kept her identity with respect to the allegations
21 in this case against Mr. Black confidential; second, the
22 prejudice to defendant; third, the particularized harm to
23 plaintiff from disclosure; and, fourth, plaintiff's
24 vulnerabilities.

25 So with that, I will start with counsel for defendant

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1 first since you brought this motion, and we will hear from you
2 all with respect to it.

3 MS. PERRY: Thank you, your Honor.

4 With respect to the first factor that your Honor
5 identified, the plaintiff's -- whether or not she has kept her
6 identity confidential previously, the answer to that is firmly
7 no, and I don't think there is a serious counterargument to
8 that.

9 The plaintiff went far out of her way to publicize
10 claims of her alleged trafficking at the hands of Jeff Epstein.
11 She courted, by using hashtags and DMs—direct messages—to
12 people with large followings. She courted a public following
13 on Twitter, as it was then known. She also went on Twitter
14 Live—Twitter Spaces I believe it is called—where --
15 approximately four dozen times, by the way, where she had
16 thousands and thousands of viewers in realtime. And according
17 to witnesses, on every occasion, or nearly every occasion, she
18 stated and restated the allegations that have come up in this
19 complaint.

20 Now, she really hadn't said a word of any alleged
21 trafficking until approximately July of 2022, whereupon she
22 launched effectively a blitz on Twitter and made these claims
23 and then amplified them as much as possible. So a lot of the
24 allegations in this complaint are out there publicly. And with
25 respect to Mr. Black in particular, she told at least two

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1 people that she had befriended on Twitter the allegations that
2 she makes in this complaint against him specifically. Now, we
3 have been hampered in our ability to reach further witnesses
4 because she has remained anonymous on the caption, which I know
5 your Honor will — you know, that that is what we are here for.

6 And that also goes to another factor of prejudice to
7 defendant.

8 THE COURT: Just on this factor with the two people
9 that she did tell, that's not the equivalent of publicly
10 revealing her identity with respect to the allegations in this
11 case, right?

12 MS. PERRY: It was on a public forum but, correct,
13 your Honor, it was via direct message. But there were people
14 who were strangers to her who she was talking to about the
15 general trafficking allegations and who she offered, willingly,
16 voluntarily, and initiated this contact and these allegations.
17 So we do not know how many people she has said this to. These
18 are just people who we happened to speak with. But there are
19 no doubt many others, and we would see that if we were
20 permitted to proceed without her being able to cloak herself in
21 anonymity.

22 THE COURT: How would you be able to see that if her
23 name was revealed?

24 MS. PERRY: Well, we believe and this is one of the
25 factors, to jump ahead to prejudice to defendant. Many courts

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1 have found that it is — including your Honor in a recent case,
2 *Doe v. Combs*, that this asymmetry in discovery is highly
3 prejudicial, so we are now at a moment when we are about to
4 proceed with discovery and so the landscape has shifted. We
5 did not oppose anonymity previously because we hoped and
6 believed that our motion to dismiss would be granted and it
7 would be unnecessary. Of course your Honor has ruled, and we
8 now believe that in order to conduct a full-throated discovery,
9 including of third parties, that we need to be able to use her
10 name, just as she is able to use Mr. Black's name and has in a
11 severely reputation-ruining way.

12 Your Honor has found, and other courts in this
13 district have found, that this kind of asymmetry is more
14 profound in cases involving substantial publicity, and that is
15 exactly where we are. This case and attending cases have
16 attracted a tremendous amount of publicity. Mr. Black has been
17 branded a child rapist to the world, and he needs to be able to
18 defend himself; and we believe that, in order to do so, we need
19 to be able to use her name, including with, again, third
20 parties and the discovery that —

21 THE COURT: Well, if you aware of who the third
22 parties are, right, you haven't been prevented from
23 interviewing witnesses. It sounds like you all have
24 interviewed quite a few, right? I think — so what is
25 preventing from you interviewing further witnesses with her

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1 name —

2 MS. PERRY: Well, we have been very careful, your
3 Honor, in those interviews. We did not put any information out
4 there. We did not initially ourselves use her name. And it
5 was obvious who some of those people were. She made claims
6 about having been trafficked as a 16-year-old and having missed
7 countless days of school, so of course we are going to want to
8 speak with her family, who is more than willing to speak with
9 us and to debunk her story. So it was easy enough to go to her
10 parents, to her sister, her friends, you know, people that were
11 in that close circle, and ask them, hey, what do you know, if
12 anything, about this. It was really very open ended.

13 We would obviously like to do more targeted discovery.
14 And even now in the subpoenas that have been issued, her name
15 isn't being used. So I think it is just a — it is a
16 significant burden for us to have to keep this kind of care.
17 And again, we won't have potential witnesses reaching out to us
18 unless her name is disclosed.

19 THE COURT: I understand that point, that there
20 aren't — without her name being identified, people aren't sort
21 of like, oh, I know who this person is and coming to you with
22 information that may be relevant. But what prevents you — it
23 sounds like — I'm not hearing anything that is preventing you
24 from reaching out to witnesses who you are already aware of and
25 gathering information with respect to the plaintiff.

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1 MS. PERRY: Well, the witnesses that we are aware of,
2 we have spoken with them. Of course, every time we do that in
3 a very orderly and respectful way, we are accused of
4 retaliation. But we have done that to an extent, but we can
5 only go so far.

6 We can't subpoena her school records. We can't
7 subpoena other witnesses just out of the blue and use her name
8 as they have. They have sent out a battery of third-party
9 subpoenas, which I know we will talk about, that they can ask
10 whatever — they have free range. They can ask whatever they
11 want. We are not permitted to do that right now. We are being
12 extremely careful in following your Honor's ruling, but we
13 would like the opportunity, now that we are in discovery, to be
14 able to meet like with like and be able to issue subpoenas as
15 well without fear of violating your Honor's order or being
16 accused of retaliation.

17 THE COURT: And just to clarify, there are specific
18 witnesses that you are aware of that you have not subpoenaed
19 because you believe you are prohibited from doing so?

20 MS. PERRY: Yes, your Honor. We have included those
21 in our brief as well. It does include academic records,
22 medical records, people who knew her before she claimed in the
23 past couple of years to have autism, down syndrome, and the
24 like.

25 THE COURT: All right. Why don't you move to

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1 particularized harm to plaintiff.

2 MS. PERRY: Yes, your Honor.

3 We believe that she hasn't articulated any. She has
4 just said that she will be harmed. What she does say, she
5 lists two factors. One, she claims that Mr. Black has already
6 retaliated against her, but she has not been able to show that.
7 We have known for over a year this woman's identity and there
8 has been absolutely no form of retaliation. The one specific
9 incident that they cite has been debunked and that is that
10 there was an ominous, large, white Suburban parked outside her
11 house. Turns out that was a neighbor's car. So there really
12 is nothing.

13 The plaintiff has a burden to articulate something
14 that is more than just general harm that every plaintiff
15 accuses someone of sex trafficking would feel or sexual
16 violence would feel. And so I think certainly the burden is on
17 them there, and they haven't done anything other than to say
18 she will be harmed. And they are required to provide some
19 backup for it and they haven't done so.

20 THE COURT: All right. In terms of plaintiff's
21 vulnerabilities here, obviously she is not currently a minor.
22 What she alleges is that she was a minor at the time of the —
23 relevant to the claim here. But unlike the decision — my
24 decision in *Combs*, there do appear to be other vulnerabilities
25 that this plaintiff in particular has alleged with respect to

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1 medical concerns and disabilities that were not present in
2 *Combs*. So why isn't that sufficient to meet the vulnerability
3 factor here?

4 MS. PERRY: Your Honor, there is no law that says that
5 a person who has reached the age of majority, even if they have
6 other vulnerabilities, that they should remain unanimous. Now,
7 I understand the factors, the ten-factor test is not exhaustive
8 and your Honor is free to consider anything your Honor thinks
9 relevant, but I do want to point out that we have found and
10 they have cited to no law that would be on point.

11 But more than that, your Honor, it is true that she
12 claims these things. It is also true that we have significant
13 evidence that belies those things. But I understand your
14 Honor's taking the allegations. But she is claiming to have
15 the developmental age of a 12-year-old, and yet she filed under
16 her own name. She did not ask for a guardian. She filed in
17 her own name, so she is competent to make these types of
18 decisions and there is no evidence that she cannot. She filed
19 a — I won't even characterize the allegations, but they are
20 horrific by any standard and very, very detailed and very
21 graphic and very particular from events that she claims
22 happened over 20 years ago. Clearly this is a woman who went
23 to high school, to college and, according to her, law school.
24 So she has the ability to be able to prosecute this case, as we
25 have seen, and to conduct discovery under her own name. There

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1 is no law to the contrary.

2 THE COURT: Thank you.

3 MS. PERRY: Thank you, your Honor.

4 THE COURT: One final question for you. The
5 identities of the plaintiffs in the case before Judge Rakoff
6 involving Jeffrey Epstein have been kept confidential, correct?

7 MS. PERRY: Yes, your Honor.

8 THE COURT: What would your response be to the
9 argument that it would be somewhat unfair to reveal plaintiff's
10 name here when sort of similarly situated plaintiffs names have
11 been kept confidential?

12 MS. PERRY: Your Honor, that is a completely different
13 situation than this case, where no one has asked that they be
14 deanonymized. That has been unopposed. We did not oppose the
15 anonymization initially, as your Honor noted in weighting that
16 as a significant factor in your Honor's previous ruling. Now,
17 because we have reached the point of discovery, the situation
18 has changed, the landscape has shifted, and we do need to be
19 able to conduct full-throated discovery. So I would just say,
20 your Honor, that is not the same as this case. Were we to
21 agree to continue in anonymity, obviously we wouldn't be here
22 and your Honor wouldn't have to spend any time ruling.

23 Thank you, your Honor.

24 THE COURT: Thank you.

25 Ms. Christensen.

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1 MS. CHRISTENSEN: Thank you.

2 Thank you, your Honor. I am just going to start, if I
3 may, right where we just left off because on one hand, the
4 defendant has claimed that they are hindered in discovery and
5 one of the examples of that was that witnesses aren't coming
6 forward. Yet at the same time, they just told your Honor that
7 thousands and thousands of followers on Twitter somehow knew
8 who our client is. So they both can't be true. So if it's
9 true that she has already disclosed her identity in connection
10 with this case, then you would think those thousands of people
11 would have come forward. So that's my point on that issue.

12 THE COURT: Let me follow up on the prejudice to
13 defendant here and their claims with respect to not being able
14 to obtain discovery.

15 MS. CHRISTENSEN: Right.

16 THE COURT: What is your response to their claim that
17 they cannot issue subpoenas or get medical records or school
18 records? Is it your position that they are prevented from
19 doing so?

20 MS. CHRISTENSEN: No, your Honor. That's what I was
21 going to move to next in that we do have a protective order
22 that was filed yesterday in this case. There is an easy
23 work-around for that. We can add an addendum to the protective
24 order that if a nonparty subpoena goes out, the person signs
25 that agreement that her name could be used with those nonparty

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1 subpoenaed witnesses. We certainly, for example, would not
2 have an objection to defendant filing his own request to the
3 school for her records, although we can also give them to
4 defendant in discovery. But again, to use her name for a
5 purpose like that, we would not have an objection to. So I
6 think with a protective order and having nonparties who are
7 subpoenaed to sign that, that it would be perfectly reasonable
8 to expect that her name is disclosed. I mean that's something
9 that we were considering ourselves. We just didn't do it yet
10 because we didn't have the protective order in place, so we
11 didn't use her name in our subpoenas. But I imagine we might
12 be reissuing some of them with the copy of the protective
13 order, and then we would disclose the name. So I think there
14 is a work around on that.

15 We obviously dispute the allegations about her telling
16 thousands and thousands of people on Twitter anything about
17 Leon Black. And I think that the glaring omission in the
18 argument is if she was saying something about Jeffrey Epstein,
19 it doesn't mean that it was also about Leon Black. And so I
20 haven't seen anything or heard anything that she spoke
21 specifically about Leon Black.

22 As to the two people evidently who they have spoken to
23 who directly messaged our client, one of them—and if your
24 Honor would like an extra submission—asked her to send dirty
25 pictures of herself to him, okay? So that's who we are talking

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1 about. People reached out to our client from something on
2 Twitter.

3 So I am fully confident that she was not interacting
4 with 50- or 60-year-old men on Twitter about Leon Black, and we
5 haven't seen anything about that.

6 THE COURT: I'm not sure — I think it would be
7 helpful if I saw those messages, because I'm not exactly
8 understanding the context here. These are two random people
9 who reached out to her and then she disclosed what happened
10 with respect to Leon Black?

11 MS. CHRISTENSEN: No. She never brought up Leon — to
12 the people that they wrote about in their motion, my
13 understanding is they were people when she said she was a
14 survivor — a survivor of Epstein reached out to her. It is
15 true that people did reach out to her and in fact that's one
16 reason she went off Twitter. It's not easy for her to know
17 exactly who might be a good person versus somebody who is
18 trying to, in a nuanced way, convince her to send photos of
19 herself without clothes on. That is why she is not on Twitter.
20 I don't believe there is a single message or anything from
21 Twitter that ever mentions Leon Black's name. I have not seen
22 that.

23 THE COURT: So it is just these — as far as you know,
24 these two people who she did not know before at all who
25 seemingly had bad motives to reach out to her who she disclosed

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1 this to?

2 MS. CHRISTENSEN: I don't even know what exactly
3 defendant says she disclosed. It was in connection with saying
4 she was an Epstein victim, but she made that post.

5 THE COURT: Right. But what did she disclose to these
6 two people?

7 MS. CHRISTENSEN: I don't believe anything more than
8 that. I would have to go back and read the messages. It's
9 been a while. I apologize, your Honor. There is no
10 specific — certainly nothing about this case, but I don't
11 believe any specifics about what actually happened to her with
12 Epstein.

13 THE COURT: What about with Leon Black?

14 MS. CHRISTENSEN: Definitely not with Leon Black.

15 THE COURT: All right. So just to be clear, you
16 dispute there were two people that she randomly shared this
17 information with with respect to Leon Black specifically.

18 MS. CHRISTENSEN: With respect to Leon Black, yes.

19 THE COURT: All right. Do you have those messages
20 that they are referring to?

21 MS. CHRISTENSEN: Not with me today, your Honor. They
22 weren't in their motion. I can certainly get them quickly when
23 I get back to the office and send them to you.

24 THE COURT: All right.

25 MS. CHRISTENSEN: That segues somewhat into the issue

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1 of her individualized harm. Our client falls into one of those
2 categories where she doesn't fit into a neat box, and so, yes,
3 she did graduate from college and she can do well academically,
4 you know, taking tests and things like that. Socially, not so
5 well. And to say that she can't — other, she did remember
6 things specifically and that happened to her a long time ago,
7 but that doesn't mean that she still does not developmentally
8 behave and see life through a lens of a much younger person
9 than her chronological age. For certain things, she can come
10 across in social situations as behaving like an adult and at
11 other times, you know, she is playing with dolls. So there is
12 a large disparity between what we are talking about here, I do
13 believe.

14 And defense counsel is correct that she did not need a
15 guardian to commence this action. So I don't dispute that. I
16 do believe, though, that her reactions, just as an example, by
17 repeatedly being called a pathological opportunist and a liar
18 in many of these court letters and filings is extremely hurtful
19 and damaging to her and she gets very upset. So it is not
20 something, as I said, that fits into a neat box, oh, she has
21 this diagnosis and this is what she is, so I can't give you
22 that.

23 THE COURT: So how does that — obviously anyone being
24 accused of lying in a court filing would be upset, but what is
25 it particular to her and her diagnoses that sort of separates

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1 her from others?

2 MS. CHRISTENSEN: Well, they are actually seizing on
3 her — she put out there that she is autistic and
4 developmentally disabled, and then they have somehow twisted
5 that and have said multiple times that she is lying about those
6 very things. To her, that's part of her identity that they are
7 challenging the fact that she is autistic or developmentally
8 disabled and then they are using that both to say that she
9 doesn't know what she is talking about, right, and now they are
10 saying, well, she is probably lying about those things, too, so
11 that can't hurt her in any way. I would say the part that
12 separates her is chronologically, she is 38, but she in many
13 ways experiences the world like a teenager.

14 Unless your Honor wants to hear about the name
15 calling, I will move on from that right now.

16 The other point that defense counsel brought up in
17 terms of damage to him and all of the publicity in this case,
18 the only reason it is getting all this publicity is the
19 defendant is a guy who everybody knows paid over \$160 million
20 to Jeffrey Epstein and then he paid \$62.5 million to the U.S.
21 Virgin Islands in connection with Jeffrey Epstein and
22 associated claims, and he was the head of a large private
23 equity firm and so now he is wondering why this is getting so
24 much publicity? His name has been associated with Jeffrey
25 Epstein for a long time, and we believe strongly that, based on

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1 those amounts of money that were paid to Mr. Epstein and the
2 \$62.5 million settlement with the U.S. Virgin Islands, that
3 there are other women who Mr. Black has settled claims with.
4 So I don't see how it is any surprise that the media is
5 following a case against Mr. Black. I don't think there is
6 anything different that they have articulated regarding him
7 versus any other case. And since we file these cases often and
8 our position is always that if the client wishes to be a
9 Jane Doe that that's how we file the case and that's what we
10 try to do. And as was alluded to here before, not every
11 defendant disputes that.

12 So if the main argument is that they weren't able to
13 conduct discovery, I think we have a work-around for that.

14 And the second point is that they already, even as she
15 has been a Jane Doe, have interviewed so many people. They
16 went to and found high school friends of our client who they
17 have interviewed. So to suggest that no one in those
18 interviews knew who they were talking about is a bit
19 ridiculous. And they showed up at the home of our client's
20 biological parents. So, they had private investigators at the
21 doorstep. When the parents came home and they walked up to
22 their front door, there were private investigators waiting for
23 them.

24 THE COURT: I understand. You are not saying that
25 there is anything improper about that, correct?

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1 MS. CHRISTENSEN: In terms of the actual interview,
2 no. But I'm just saying it hasn't hindered their ability to
3 conduct the discovery that they claim.

4 THE COURT: Obviously I recently decided a similar
5 issue, this similar issue in *Combs*. How would you distinguish
6 this case?

7 MS. CHRISTENSEN: Well, because our client — it
8 wasn't her choice as a minor when she was told to be in a
9 certain place at a certain time and meet with Mr. Black. That
10 was not her decision. And while he is a public figure in the
11 Wall Street circles, I do think when there is a client or a
12 victim who is in a long-term — any type of a long-term
13 relationship with a public figure, that they themselves have
14 placed them out into the public as identified as a girlfriend
15 or at least a friend or associate of that person and that that
16 is a very different scenario than what happened with our
17 client. So I think the public figure cases are very different
18 from the cases in which both the plaintiff and the defendant
19 are private individuals, and I do think that the factors under
20 Sealed Plaintiff and Sealed Defendant should be varied when it
21 comes to public figures. And that's one reason.

22 And the last thing I will say about not submitting
23 proof in the form of — I'm not sure what exactly they wanted
24 to see, but again, I feel strongly that not every plaintiff or
25 a victim in a sexuality case even has lawyers. So to suggest

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1 that they are required to get an expert opinion of some sort
2 just to proceed as a Jane Doe is really placing a high burden
3 on somebody who might not have those resources. And there are
4 plenty of plaintiffs that do meet that category and might
5 proceed *pro se* and we are establishing a very high bar for
6 somebody like that; that if you have a lot of money and you can
7 afford a medical expert of some sort, then you get to be a
8 Jane Doe. But if you are poor, then you might not. And I
9 don't think that's an appropriate standard to place on a
10 victim, so that's my point.

11 THE COURT: All right. Thank you, Ms. Christensen.

12 All right. Ms. Perry, do you want to respond very
13 briefly?

14 MS. PERRY: Yes, your Honor.

15 Your Honor, some of Ms. Christensen's points have
16 highlighted the very, very specific and clear prejudice to our
17 client in not being able to use plaintiff's name. We just
18 found out about a new person today that the plaintiff had
19 reached out to and told these allegations about Mr. Black. The
20 two people who we are aware of who she told about Mr. Black are
21 both women. It's not this creepy guy who asked her for photos.
22 So there are other people out there. And it is important that,
23 as much as Ms. Christensen just now suggested an addendum to a
24 confidentiality agreement we had already worked out, that does
25 not begin to do for us what we need in order to defend this

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1 case. We would like — so one of the people who we found out
2 about on Twitter figured out that this case was brought by the
3 person she knew from Twitter because the plaintiff had told her
4 exactly the same things. So I know Ms. Christensen says she is
5 not sure about that. That is what happened. The allegations
6 that she had told this woman on Twitter not too long before she
7 filed the complaint very much track what's in the complaint,
8 and this woman put that together and reached out to us, and
9 there are no doubt many other people —

10 THE COURT: Let me ask you this: I think there may be
11 a distinction between a plaintiff confiding in a couple people,
12 right, about what happened to them and that wouldn't sort of
13 necessarily weigh as that person is now not keeping what
14 happened to them confidential, right? Like if that person is
15 just confiding in a few people, maybe it is somebody who has
16 also experienced trafficking and they want to sort of confide
17 in a person who has a similar experience, that to me doesn't
18 really support the idea that they are now not keeping their
19 claims confidential. But randomly reaching out to people and
20 just telling whoever asks, that's sort of the underside of that
21 scale. So where do you see these — what's happening with
22 plaintiff telling people on that sort of scale?

23 MS. PERRY: It's on that end of the scale. So we
24 really need to just start, and I think we can end, with the
25 fact that she told thousands of people on Twitter about the

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1 very allegations against Mr. Epstein that she alleges in this
2 complaint. They cannot elide that fact. Ms. Christensen
3 started by saying, well, people could have come forward because
4 she did say these comments on Twitter. So she conceded that.
5 But of course she has not used her name here publicly, so they
6 cannot make those connections. But that really -- I think we
7 could begin and end there. A large part of her complaint is
8 that she was trafficked by Jeffrey Epstein to Leon Black, and a
9 lot of that is out there. It is just dots cannot be connected
10 because she has decided to proceed anonymously. So it is not
11 just the random outreaches that she initiated to people on
12 Twitter talking about Mr. Black specifically, but it's the
13 thousands of people that she regularly made these allegations
14 to about the core allegations in the complaint.

15 And your Honor, I just wanted to finish one little
16 point, I think there was a strand out there, about this notion
17 of an addendum to our confi. That would not give us the
18 freedom to just reach out to people ourselves. Forget even
19 with a third-party subpoena, but just do informal interviews,
20 which we now have conceded there is nothing wrong with it. He
21 has to be able to do that to defend himself.

22 So unless your Honor has any further questions, thank
23 you.

24 THE COURT: So I will reserve ruling with respect to
25 that. I know there are a couple of sealing requests with

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1 respect to this motion as well that I will just handle in one
2 decision.

3 So now moving along to the parties' proposed case
4 management plan, the schedule is fine. I will so order it and
5 add a case management conference date, likely May 1 of next
6 year at 1 p.m. -- excuse me, 11 a.m.

7 I just want to make a note now about discovery
8 disputes. It appears there may be some in the pipeline that
9 you all have. I just want to draw your attention to my
10 individual rule with respect to discovery disputes. They
11 should be submitted via a joint letter after a meet-and-confer
12 process, obviously, as required under all applicable rules.
13 But one point I want to make specifically is that the parties
14 should comply with my rules that require that you all include
15 in the joint letter the position the parties started with at
16 the beginning of the meet-and-confer and each party's final
17 proposed compromise and why the opposing side finds the
18 compromise position insufficient. So please include that in
19 any joint letter. Any letters without that information will be
20 denied.

21 I know that this is a tough case and you all have
22 spent a lot of time, I think unnecessarily, attacking one
23 another. You all should focus on the issues when you bring
24 disputes and do not waste words and space on unnecessarily
25 attacking one another.

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1 I have also reviewed the confidentiality proposed
2 order at ECF 149 which is fine, and I will enter that as well.

3 The last issue that I have is the discovery dispute
4 regarding documents in Judge Rakoff's case. The relevant
5 letters start at ECF No. 107. I have reviewed the parties'
6 letters regarding that request. Those are documents before
7 Judge Rakoff that are sealed in his case. Because of that,
8 counsel for defendant should direct any requests regarding
9 those materials to Judge Rakoff.

10 I know there is also a request to bifurcate discovery
11 in this case with respect to those documents first and then
12 other discovery. We are not going to do that. We are moving
13 forward with discovery. You all should seek those documents
14 through Judge Rakoff's case, and he will make a decision with
15 respect to those documents, and you are all otherwise moving
16 forward with discovery. They should not be done through
17 subpoenas of third parties and counsel.

18 There is another outstanding discovery dispute related
19 to class counsel from that case before Judge Rakoff. I will
20 address that in an order after this conference.

21 All right. I know there were some concerns about some
22 of the subpoenas that plaintiff's counsel has been issuing. I
23 just want to remind all counsel the issues here I think are
24 clear as to what is appropriate. What I am hearing is that
25 subpoenas are being sought that are potentially seeking

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1 information that's outside the bounds of what is relevant. So
2 please I think you all should be mindful of what you are
3 seeking here. It needs to be relevant and not harassing, and I
4 will not hesitate to quash subpoenas if I find that they are
5 outside of those bounds. I have nothing before me with respect
6 to that. I just wanted to make clear that I have some
7 concerns, but I will address issues as they come to me. All
8 right?

9 Is there anything else for us to discuss today,
10 Ms. Christensen?

11 MS. CHRISTENSEN: No. Not from the plaintiff. Thank
12 you.

13 MR. CARLINSKY: Your Honor was very clear on all the
14 points. I appreciate it. We are then going to reach out to
15 Judge Rakoff, and your Honor made clear you don't want us to do
16 it through subpoenas of the parties. Do we have the Court's
17 approval, though, that we can say to the Court—Judge Rakoff,
18 that is—that we are before your Honor and that the Court's
19 preference is that we address the issues directly with his
20 Honor?

21 THE COURT: Absolutely.

22 MR. CARLINSKY: Okay. Appreciate that.

23 THE COURT: All right. Anything further?

24 MS. ESTRICH: Nothing further, your Honor.

25 THE COURT: We are adjourned. Thank you all.

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